IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO: 4151 of 2005

Between:

A. Satyamaiah S/o. Sri Rajamallaiah
R/o. Reddy Colony, Miryalguda, Nalgonda District.

.... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by its Secretary,
Roads & Buildings Department, Secretariat, Hyderabad.
2 The Superintending Engineer, R & B Division, Nalgonda.
3 The Executive Engineer, R & B Division, Miryalguda.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction and more particularly one in the nature of WRIT OF MANDAMUS by calling for the records leading to 3rd Respondent's letter/notice No. AB/A1/2004-2005/1778 dt. 23-2-2005 and quash the same; and pass such other or further orders deemed just and proper.

Counsel for the Petitioner: MR.BATHINI PAPA RAO GOUD

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court made the following:

-

-

-

-

-

-

-

-

ORDER:

Challenging the proceedings of the third respondent dated 23.02.2005, the present writ petition is filed.

2. The petitioner entered into L.S.AB No.36 of 2002-2003 dated 27.6.2002 for laying road from KM.7/0 to 16/0, wherein the value of the contract work was about Rs.76 lakhs and the period for completion of the work was 6 months from the date of handing over of the site. The site was handed over to the petitioner on 27.06.2002. The petitioner could complete the work worth about Rs.60 lakhs and he could not proceed with further work due to the deviations suggested, which required sanction from the higher authorities. Thus the work was held up for want of deviation approvals, for which he had sufficiently waited till March, 2004. Therefore, he had no other alternative except to withdraw from the work under intimation to the respondents by his letter dated April, 2004.

3. The respondents required the petitioner to extend bank guarantee and gave a consent letter to execute the balance work at the agreed rates without any claim for increased rate and to apply for extension of time. The third respondent unilaterally extended the time to complete the work. The letters dated 18.01.2005 and 04.02.2005 were received by the petitioner on 22.01.2005 requiring him to resume the work within 7 days from the date of receipt of the said letter extending the time up to 28.02.2005. After receipt of those letters, the petitioner informed the respondents that he is going to start the work from 24.02.2005 at the agreed rates and submitted a detailed programme of work and accordingly, he commenced the work on 24.02.2005. But, on 28.02.2005 he received another letter from the 3rd respondent

dated 23.02.2005 determining the contract and demanded him to pay a sum of Rs.7,59,150/- towards liquidated damages and Rs.95,316/- towards quality control recovery besides forfeiting the EMD and other deposits. Hence the present writ petition.

4. The third respondent filed a detailed counter affidavit denying that the work was held up for want of deviations. The petitioner was given free hand to go ahead with the execution of work without any hurdles for want of deviations, as they are independent items of work. The petitioner has failed to complete the work as per the agreement conditions. The petitioner was notified by several letters and a final notice was given. As the petitioner has not maintained the rate of progress as per the mile stones fixed in the agreement, he was notified with his liabilities of liquidated damages of Rs.10,84,446/- which includes quality control recovery of Rs.93,516/- and the contract was determined on 23.02.2005 under clause 60(a) of PS to APSS as the petitioner has not complied with the instructions of the third respondent. Hence, he prays to dismiss the writ petition.

5. Learned counsel appearing for the petitioner Mr.Subba Reddy contended that though there is default on the part of the petitioner, but in the interests of justice, he may be given one more opportunity so that he will complete the work by the end of May, 2005 at the agreed rates as per the contract without any claim for increased rates. He submits that it will also cause hardship to respondents in again calling for tenders at the escalated prices and therefore, he prays to allow the writ petition.

6. On the other hand, learned Government Pleader for Transport and Roads and Buildings opposed the same on the ground that in spite of several opportunities, the petitioner did not complete the work and a final notice was given to him and in spite of it, he did not complete the work and hence under clause 60(a) of the agreement, the contract was determined and therefore question of entrusting the work to the petitioner does not arise.

7. The factual matrix with regard to entrustment of contract work for laying a road

worth about Rs.76 lakhs and completion of work by the petitioner to a tune of Rs.60 lakhs are not in dispute. Though, it is stated that the writ petitioner could not proceed further for want of deviation approvals, the third respondent contended that the contractor was given free hand to go ahead with the work without any hurdles for want of deviations as they are independent items of work. As rightly contended by the learned Government Pleader, petitioner was notified by several letters dated 19.12.2003, 9.1.2004, 6.5.2004, 20.10.2004, 25.1.2005 and 14.2.2005 to complete the work on or before the dates specified in those letters. So, there are some laches on the part of the petitioner in completing the works as directed by the department. It is a case where petitioner failed to complete the work as per the agreement conditions. Finally, by proceedings dated 04.02.2005, the third respondent requested the petitioner to resume work within 7 days of receipt of notice, failing which his contract will be determined as per Clause 60(a) forfeiting all the amounts. Admittedly, that letter has not reached the petitioner though it was sent by registered post. It was returned as the petitioner was absent continuously for a period of seven days. Thereafter, it is stated by the respondent that the petitioner furnished his programme of work by letter dated 23.2.2005. That was not accepted by the third respondent, in view of the fact that they have already passed the order on the same day fixing liquidated damages and also quality control recovery.

8. The contract was entered in to by the petitioner with the third respondent on 27.6.2002 for laying of a road. Admittedly, the petitioner completed the work worth about Rs.60 lakhs and the remaining value of the work is only Rs.16 lakhs. It is also not in dispute that the said amount was paid without any hurdle as and when funds were available. Three years have elapsed. Now the petitioner is prepared to execute the work by the end of May, 2005. Even if the respondents call for tenders again, naturally, it would be an extra burden for the State due to escalation of prices. According to learned counsel for the petitioner, if a tender is called for, it would cost about more than 30 lakhs, but the petitioner is prepared to proceed with the work and execute the balance work at the agreed rates without any claim for increased rates. Further, the petitioner has also made it clear by his letter dated 23.02.2005 that he has an intention to commence the work at the agreed rates and submitted a detailed programme of work. For the remaining work, admittedly no tenders have been called for. The rights of third parties have not been intervened or cropped in.

Even if the respondents go for fresh tenders, it will cause more financial burden. Therefore, in the interests of justice, a direction can be given to the respondents to permit the petitioner to complete the work within specified time. The writ petition is disposed of with a direction to the respondents to allow the writ petitioner to execute balance work at the agreed rates without any claim for increased rate so as to complete the work on or before 30.05.2005, after taking necessary permission from the third respondent. The petitioner shall resume the work within 3 days from the date of receipt of permission from the third respondent. The petitioner shall be bound by the terms and conditions of the earlier agreement. By reason of this order, petitioner is not entitled to claim any increased rates. The standard of work should be the same as agreed between the parties. Petitioner is also not entitled to claim any damages. If the petitioner fails to commence the work within three days after the third respondent gives permission and if he does not complete the work on or before 30.05.2005, the petitioner shall pay liquidated damages of Rs.7,59,150/- and Quality Control recovery of Rs.95,316/- as per the proceedings of the third respondent dated 23.02.2005. Appropriate action can be taken by the third respondent in pursuance of his letter dated 23.2.2005, if the petitioner fails to fulfill the above directions.

9. The writ petition is disposed of accordingly. No costs.

_____

K.C.BHANU, J

Dated: 11.04.2005

Note:

Issue C.C. by two days

(B/o)

RAR

To

1 The Secretary, Government of Andhra Pradesh,
Roads & Buildings Department, Secretariat, Hyderabad.
2 The Superintending Engineer, R & B Division, Nalgonda.
3 The Executive Engineer, R & B Division, Miryalguda.

4 2 CCs to G.P for Transport, Roads & Buildings, High Court Buildings,

Hyderabad (OUT)

5 2 CD copies.